



Your Ref MA 100020

RE - Controlabill Pty Ltd Patents approved, number 2007242060 and 2012244223.

Breach of approved patents by NPPA. Controlabill's formal complaint raised to the ACCC and to the RBA Payment Systems Board.

Dear Ms Wu.

Regarding the draft undertaking from the ICA, Controlabill does not believe the proposed undertaking in any way addresses its concerns regarding the proposed merger.

Those concerns remain primarily;

- Breach of patent by NPPA. We believe it should be impossible to allow a merger or any change in ownership structure, when there may be a [REDACTED]
[REDACTED]
[REDACTED]
- On our review and understanding of ACCC definitions NPPA may be in breach of the following ACCC definitions;
Abuse of Market Power,
Unconscionable Conduct,
Misleading and Deceptive Behaviour,
[REDACTED] patented IP,
Breach of Copyright, and
Breach of NDA agreements by some of the owners of NPPA,
- Moreover, we remain concerned that the Governance of the Industry is in flux and it should be impossible to pass any merger in the absence of an agreed governance model.

The ACCC should defer any decision regarding the merger until these matters can be properly and publicly reviewed.

KWM have proffered an opinion that the MPS service is immaterial to the application, we believe that it is not and that its impact on the lives of ordinary Australian households is orders of magnitude greater than least cost routing.

As the Founders of Controlabill and having spent collectively 40 years in Banking and another 10 in various Utilities, we designed and went on to Patent a business model that would allow households to better manage their non-discretionary payments by centralising the authorities they have given their service providers. These Authorities or Mandates allow billers to take money from accounts. These are direct debit predominantly, but our patent covers all other standing authorities. In centralising these Authorities, we enable the convenience of update and easy supplier switching of one service or all of them at one time. The data in the authorities (who is being paid, how much and when) allows for set and forget budgeting without the risks associated with screen scraping. Imagine setting up all of your bills in 15 mins once a year and bill smoothing so as to pay a set amount each pay period to cover those essentials. Today, this model could also be a simple central plank for the Consumer Data Right because all of a household's billers are in one place and the data could easily be permissioned to a broker or comparator.

Our model is a simple, but the numbers are huge. There are approximately 9.5 million households which according to the last household expenditure survey spend around \$70,000.00pa on essential payments. This expenditure exceeds \$670billion in total. We estimate there are around 130 million authorities in the direct debit system alone and more in credit cards, Bpay, (now Osko) and discretionary subscriptions. That's a lot for a household to manage. The data held here could yield each household competitive benefits close to \$9000.00 for each household (numbers verified by Compare the Market and Finder) if used properly under the CDR.

In 2006 when my business partner and I developed the model there was no easy way to manage these Authorities and every household has a horror story. Some 15 years later there is still no delivered solution despite three attempts by the banks and multiple attempts by us to engage with Treasury, The RBA and other potential trust partners such as Australia Post. We have been blocked by the Banking and Payments industry at every opportunity.

While to some extent the MPS (now Payto), being developed by NPPA validates the core of our model, they have now [REDACTED] and used their market power and massive law firm to threaten us and then stonewall any and all attempts to appeal our case.

According to NPPA they have been working on it for 5 years and still it has not been released. In fact, in their most recent submission to the ACCC they have delayed it for yet another year to mid 2022.

Moreover, the product is also being developed in entirely the wrong part of the payments space, It needs to reference the BECS (which is why we have questioned where is BECS in this application) direct debit system which is the payments heavy lifter and Card Systems, not NPPA a fact acknowledged by the RBA in its own analysis both recent and going back to 2012.

We believe this is just a strategic 'roadblock' to stop Controlabill from getting capital to build the solution. The Australian payments industry would be terrified that Apple or Google should wake up to the fact that it is the authorities that are given between the customer and the service provider that control everything that matters in financial services. To date this [REDACTED] has been effective but we are surprised that the industry has chosen [REDACTED] rather than acquire it to give them years of legal protection.

It is against these [REDACTED] behaviours, that the industry wants permission to further consolidate its market power. It is simply ridiculous and dangerous and needs to be stopped.

At the bottom of this note you will find a Controlabill Summary which outlines our issues with NPPA and the Payments industry.

Governance

We have issues with the governance of the industry and the lack of any transparent tendering process for major projects in payments.

I also have major problems with the role of King, Wood, Mallesons (KWM) and its payments partner Scott Farrell [REDACTED]
[REDACTED]

- KWM is the lead advisor to the Industry Committee Administration Pty Ltd (ICA) on the merger before the ACCC, which will if it goes ahead will create a big four bank monopoly in the payments space.
- The chair of the ICA, running the merger application for the big four is Robert Milliner ex of Mallesons and the architect of KWM.
- KWM also advise the Fintech Association.
- Scott Farrell of KWM led the initial CDR advice to Treasury
- Scott Farrell went on to advise Treasury on the CDR Future Directions and provided advice which blatantly favours NPPA.
- Scott Farrell also headed the Treasury review into the governance of the industry (currently completed but not public).
- The RBA has asked KWM partner Scott Farrell who has completed the review of the payments system architecture for Treasury to further consider reforms that would give the RBA greater regulatory power.

On other Governance matters we are on the record that have serious issues with Auspaynet, The Australian Payments Council, (we find Milliner here as the Chair) and NPPA whose Boards are all the same self - interested organisations and people. There is no independent body of substance to appeal to for any grievance. Other than the RBA (which we tried - response attached) and the ACCC. Our grievance and correspondence with the industry has just been totally and unhelpfully stonewalled. It is a shame that this has to escalated to Regulators. [REDACTED]
[REDACTED]

██████ It will bring about some serious questions for the industry. It is ironic that this is a group who are abusing their market power but who want protection from Apple who they claim is abusing market power.

Questions we have asked ACCC

The merger application before the ACCC is not at all transparent and a lot of information is redacted or simply not covered at all.

We have asked the ACCC to ascertain from ICA clarification on the matters below;

- Information related to the fate of the MPS under the merger. KWM have said it's irrelevant. The MPS isn't irrelevant as the above market statistics reveal,
- We have asked why the BECS (direct debit) entity is not in the application,
- We have also asked why NPPA is developing an overlay service (MPS) outside of its charter,
- We have said the merger application should stop pending an official investigation by the ACCC re NPPA who ████████ patent protected IP, which is a ████████ offence.

None of these questions have yet been answered. I am deeply concerned about this, not just about what has been disclosed in this merger application but, also what has not been disclosed.

The RBA

We first briefed the RBA about our solution in 2006 They published us in 2007. By 2012 on the \$300m failure of Account Number Portability (MAMBO) and the Tick and Flick solution the RBA wrote in their 2012 Review of Innovation in the payments industry as follows -

3.7 A Note on MAMBO

The approach taken in this paper will inevitably draw comparisons with 'Project MAMBO' which was being developed by the major banks and BPAY until mid 2011. MAMBO had the potential to offer a number of features that have been supported in this document. That does not necessarily mean that MAMBO was the 'right' solution nor that the banks were mistaken in withdrawing from the project. It does however illustrate the difficulties with cooperative innovation and building a commercial model that appeals to all players for a major investment project. It is quite possible that benefits similar to those delivered by MAMBO might have been provided at less cost if delivered in a different way, perhaps by different systems. **It is also possible that a different business model might be required, or perhaps that such central services are best provided as a utility, rather than on a commercial basis.**

Having published this note the RBA allowed the banks, after the failure of the first two attempts, a third opportunity. They were aware of our model now being used by NPPA. Moreover, the RBA put in public funds to get NPPA done including the MPS when they must have known this was not the place to do it! We have always said

the solution should cost less than \$5m and about a six-month development timeline not years and years at an undisclosed cost. Why was this project not part of an EOI and public tender by the RBA given their knowledge of us.

Consistent with the RBA's own observations above we have always been of the view that the best place to allow for Central Authority Management was and still is Australia Post(AP), because it is competitively impartial and the data held in the Authorities is consistent with enhancements to Digital Identity and more recently it is the right place for the registration and maintenance of authorities granted under the CDR.

Our model for AP was to charge Billers around \$2 for each authority established and a smaller fee for maintenance and changes, but which offered a saving we estimate of around \$10 for Billers per authority. This project could have been long finished as a service to the public and a quarter billion-dollar revenue stream for AP. As it is Australia has nothing and what is being slowly developed is in the wrong place.

Lastly, I would like to bring up the issue of the RBA's investment in and part ownership of NPPA. I would certainly like to understand how much public money has been invested in NPPA and more importantly in the MPS? As a part owner of NPPA and a board member I wrote to the RBA Governor to find out how much the RBA Board member of NPPA knew of our breach of patent claim and the [REDACTED] and received the letter as per the attachment on what looks to be a photocopy on plain paper and not even on official letterhead. This response will be the subject of an official complaint by us to the RBA Payment Systems Board (PSB). Not only was my question not answered, with a brush off. The RBA has a duty to resolve these disputes, it is written into the PSB charter. This matter may be an example of 'Regulatory Capture'.

It seems that unless we launch a multi-million-dollar lawsuit, against the market power of the entire banking industry [REDACTED] we might never get to the bottom of what is going on here. What is needed is a Senate Inquiry or a Royal Commission such that proper discovery can take place.

It is a great shame that the payments industry was not part of the Hayne Royal Commission. The industry is massive (30% plus of bank profits) and it fights all innovation to maintain the status quo. There is some irony that this [REDACTED] wants regulatory protection from the likes of Apple from what they say is their market power when their own behaviour to smaller innovators is exactly the same abuse of market power.

We believe a proper and **independent** examination of this industries structure and regulation is long overdue. Such a review should be entirely at arms – length and possibly led by the Productivity Commission.

It should cover;

- The industry's structure which is not at all market focussed,
- it should aim to rectify a lack of effective governance
- the industries competitiveness.

- Whether It is a cartel that needs to be broken up so we might see some innovation not more regulatory protection from innovators such as Apple.

The world has moved on and this industry is holding Australians back and disallowing the benefits outlined above. I think if we asked Australians which is more important saving \$9000.00 or least cost routing, I think I know the answer.

The current application for a merger should be rejected until a proper and fully independent review is undertaken.

There is also a need to examine the use of public money by this Government, there is a total lack of public tenders and 'Jobs for the Boy's' prevails.

We are quite sure the general public would be incensed by the waste and what has been denied them if these matters were to become public.

Yours faithfully
 Bernard Wright
 Founder Director Controlabill
 0401 311 110

Controlabill Summary

- Controlabill was founded in early 2006 by Stephen Coulter & Bernard Wright. With more than 50 years of collective banking and utilities experience, they identified a solution to a fundamental problem in the widely used Direct Debit and Card systems – and all other customer “authorised” payment systems.
- Predominantly phone and paper-based, direct debits and subscriptions are difficult to change whenever an account number changes, or a customer chooses to change banks. Moreover, the difficulty in changing direct debits is a barrier to switching Banks, Insurances, Telco's, Utilities and Subscription services.
- Stephen & Bernard devised a solution allowing payment “authorities” to be managed centrally and electronically by the customer and connected by API to the service provider or any authorised participant in the payment system – e.g., banks and billers. While this solution may seem obvious in 2021, it still does not exist. NPPA claim they have been working on it since their inception some 5 years ago.
- Stephen & Bernard worked with top-end IP lawyers, Griffith Hack, to document their solution as intellectual property and lodged multiple patents and trademarks to protect their intellectual property.
- The solution and Intellectual Property is relevant globally as direct debit systems exist in most major countries with the same outdated processes.
- Stephen & Bernard believed a major bank, international bank or payment scheme like Visa or Mastercard would be keen to license/acquire such a solution due to the many advantages it would bring – especially to a first mover. If Google or Apple moved into this space globally it would enhance their wallets and it would rapidly transform the industry

- [REDACTED]
[REDACTED]
[REDACTED] Other organisations briefed include the Reserve Bank of Australia, APCA (Auspaynet), EFTPOS, Bpay and Australia Post. All meetings were held on a “commercial in confidence basis” and documentation clearly labelled as such. Patents were advised to all meeting participants and provided as a reason why they should engage with Controlabill to bring a protected solution to market.
- Bank executives involved included some at the highest level, others who have gone on to industry positions [REDACTED]
[REDACTED]
- Many meetings were held with all banks since 2006. No bank committed to engage and pay Controlabill for its solution and IP. It seemed banks did not see it in their interest to enable a customer friendly method of changing payment authorities – the bankers “club” seem to prefer making it difficult for customers to change banks.
- Over the last 15 years, while under public pressure, the Banks undertook several failed projects to make it appear they were addressing “account portability” to enable customers to change banks as easily as mobile-phone customers can change telco providers. Despite the industry spending and no doubt writing off hundreds of millions of dollars on projects including “Tick & Flick”, “MAMBO”, CDR and more recently the “New Payments Platform Australia” NPPA, no customer solution has been launched.
- The proposed ‘Mandated Payment Service’ (Payto) being proposed as part of the NPPA, [REDACTED] Controlabill’s IP regarding “Authorities” Management. (Mandate is just another word for Authority).
- Despite many attempts, Controlabill has been ignored and or bullied by the banks, industry associations, their lawyers and regulators.
- The NPPA is owned by 13 of the largest financial services companies in Australia most of whom [REDACTED]
[REDACTED] and are aware of Controlabill’s patents which were granted in 2012.
- Any launch by the NPPA or its owners now or in future will be [REDACTED]
[REDACTED] of Controlabill’s IP. Its stated intent to do so has already significantly damaged Controlabill.
- Stephen & Bernard, as the Founders of Controlabill, have personally invested years and hundreds of thousands of dollars in developing Controlabill and its IP.
- The relatively recent Banking & Finance Oath does not seem to have changed behaviour. We have dealt with executives who are and aren’t signatories who behave the same.
- Despite Banking Enquiries and Royal Commissions, the industry is as arrogant as ever in not respecting the rights of a small business, seeking to radically simplify and solve a long-standing banking problem.
- Controlabill would be delighted for the NPPA to launch a Mandate Payment Service for customer benefit – provided Controlabill is paid for its IP.